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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,382	12/14/2001	Timothy Roy Block	ROC920010307US1	2244
7590 02/26/2007 Gero G. McClellan Moser, Patterson & Sheridan, L.L.P. Suite 1500 3040 Post Oak Boulevard Houston, TX 77056-6582			EXAMINER SWEARINGEN, JEFFREY R	
			ART UNIT 2145	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/26/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/020,382

Applicant(s)

BLOCK ET AL.

Examiner

Jeffrey R. Swearingen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-9,11-13,16-24 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3,4,6-9 and 26-29 is/are allowed.
- 6) ☒ Claim(s) 11-13 and 16-24 is/are rejected.
- 7) ☒ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 21-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

4. An interview was conducted with Applicant's representative on 2/16/2007. In that interview Applicant agreed to an Examiner Amendment to change claims 21-24 to read on a "computer readable storage medium" from a "tangible computer readable medium" if the claims were brought in condition for allowance. At this time, claims 21-22 would be in condition for allowance pending this change. Claims 23-24 would need to be amended appropriately upon becoming in condition for allowance.

Allowable Subject Matter

5. Claims 1, 3, 4, 6-9, and 26-29 are allowed.

6. The following is a statement of reasons for the indication of allowable subject matter: The prior art failed to teach the sequence of generating a first layer PDU by attaching a first header and reserving a space in the first header for an identifier, sending the first layer PDU to a second protocol layer, generating a second layer PDU by attaching a second header to the first layer PDU, reserving a space, generating an identifier, and storing the identifier in both the first and second protocol layers.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 11-13, 16-20, and 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Zinky et al. ("Visualizing Packet Traces").

9. In regard to claims 11 and 23, Zinky disclosed:

receiving from the network, at the second protocol layer, the data, a first header corresponding to the first protocol layer, and a second header corresponding to the second protocol layer;

removing, at the second protocol layer, the second header from the data, the second header having an identifier;

copying the identifier from the second header to a reserved space in the first header;

sending the data and the first header from the second protocol layer to the first protocol layer; and

removing the first header from the data at the first protocol layer.

The protocol analyzer of Zinky showed a packet with a header including an identifier. See figure

4. In order to have the identifier included in the header, space was reserved for the identifier in the header and the identifier was generated and stored in the reserved state.

10. In regard to claim 12, Zinky disclosed:

the first protocol layer is the highest protocol layer of the layered sequence of the data communication protocol layers.

This is inherent to the OSI model as used in Zinky.

11. In regard to claim 13, Zinky disclosed:

the second protocol layer is the lowest protocol layer of the layered sequence of the data communication protocol layers.

This is inherent to the OSI model as used in Zinky.

12. In regard to claims 16 and 24, Zinky disclosed:

reserving a space for the identifier in the header added to the data at each successive protocol layer;

generating the identifier at one of the protocol layers; and

storing the identifier in the reserved space of one of the protocol layers.

See the rejection for claims 11 and 23. Claims 16 and 24 are broader recitations of claims 11 and 23.

13. In regard to claim 17, Zinky disclosed:

reserving a space for the identifier in the header of each protocol layer comprises reserving the first four bytes of the header.

14. In regard to claim 18, Zinky disclosed:

the one or more computers comprise a sending computer and a receiving computer;

and wherein reserving a space for the identifier in the header of each protocol layer comprises reserving a space for the identifier in the header of each protocol layer of the sending computer.

The sending and receiving computer were inherent to Zinky. The reservation of space for the identifier was previously addressed in claim 16.

15. In regard to claim 19, Zinky disclosed:

generating the identifier at the lowest protocol layer of the sending computer.

See the rejection for claim 11 and 16.

16. In regard to claim 20, Zinky disclosed:

copying the identifier from the lowest protocol layer in the sending computer to the rest of the protocol layers in the sending computer;

sending the identifier from the lowest protocol layer in the sending computer over the network to the lowest protocol layer in the receiving computer; and

copying the identifier from the lowest protocol layer in the receiving computer to the rest of the protocol layers in the receiving computer.

See the rejection for claims 11 and 16. Claim 20 is a broader recitation of claim 11.

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zinky.

19. In regard to claim 17, Zinky was applied as in claim 16. Zinky failed to disclose that the first four bytes of the header were reserved for the identifier, but rather disclosed that an identifier was used in the header. It would have been obvious to one of ordinary skill in the art to insert any length of identifier in the header at any location in the header to facilitate ease of data transfer over the network protocol.

Response to Arguments

20. Applicant's arguments filed 3/15/2006 have been fully considered but they are not persuasive.

21. Applicant argued Zinky failed to disclose each and every element as set forth in the claim, particularly "reserving a space for the identifier in the header added to the data of each successive protocol layer." Applicant argued Zinky was directed toward the definition of a specific header. Although

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Zinky is toward a more specific header than Applicant claimed, Zinky still meets the limits of Applicant's claim since Applicant broadly claimed the subject matter.

22. Applicant's representative and the Examiner attempted to schedule a telephonic interview on 2/19/2007 to bring the remaining claims into condition for allowance, but were unable to do so.

Applicant's representative is strongly urged to contact the Examiner by telephone upon receipt of this action to discuss strategies for moving the case toward allowance.

Conclusion

23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571) 272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jason Cardone
Supervisory Patent Examiner
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